

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

LETITIA DELKS and GEORGIA
DICKERSON,

PLAINTIFFS,

V.

CITY OF SAVANNAH, SAVANNAH
CHATHAM METROPOLITAN POLICE
DEPARTMENT, JOSEPH H. LUMPKIN,
SR., in his official capacity, OFFICER
DARRYL REPRESS, individually and in his
official capacity, and JOHN DOES.

DEFENDANTS.

CIVIL ACTION NO. CV417-70

DEFENDANT DARRYL REPRESS' ANSWER AND DEFENSES

Comes now Defendant Darryl Repress ("Ofc. Repress"), and files this Answer to
Plaintiffs' Complaint.

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Some or all of Plaintiffs' claims are barred as a result of an insufficient ante litem notice.

THIRD DEFENSE

Any injuries or damages suffered by the Plaintiffs were caused by the negligence or
actions of third parties, and any recovery therefore is barred or must be proportionately
diminished.

FOURTH DEFENSE

Plaintiffs' claims against Ofc. Repress in his individual capacity are barred by the

doctrines of qualified immunity and official immunity.

FIFTH DEFENSE

Plaintiffs' claims against Ofc. Repress in his official capacity are barred by the doctrine of sovereign immunity.

SIXTH DEFENSE

Plaintiffs are not entitled to attorney's fees as a matter of law.

SEVENTH DEFENSE

Some or all of Plaintiffs' claims may be barred by the applicable statute of limitations.

EIGHTH DEFENSE

Ofc. Repress responds to the enumerated allegations of Plaintiffs' Complaint as follows:

PARTIES AND JURISDICTION

1.

Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the allegations of paragraph 1 of Plaintiffs' Complaint.

2.

Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the allegations of paragraph 2 of Plaintiffs' Complaint.

3.

In response to the allegations of paragraph 3 of Plaintiffs' Complaint, Ofc. Repress admits that Joseph H. Lumpkin, Sr., is the Chief of Police for the City of Savannah. Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the remaining allegations of paragraph 3 of Plaintiffs' Complaint.

4.

Ofc. Repress admits the allegations of paragraph 4 of Plaintiffs' Complaint.

5.

Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the allegations of paragraph 5 of Plaintiffs' Complaint.

6.

Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the allegations of paragraph 6 of Plaintiffs' Complaint.

7.

Ofc. Repress denies the allegations of paragraph 7 of Plaintiffs' Complaint.

8.

To the extent that "this court" in paragraph 8 of Plaintiffs' Complaint means the United States District Court for the Southern District of Georgia, Savannah Division, Ofc. Repress admits the allegations of paragraph 8 of Plaintiffs' Complaint.

BACKGROUND

9.

Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the allegations of the first sentence of paragraph 9 of Plaintiffs' Complaint. In response to the allegations of the second sentence of paragraph 9 of Plaintiffs' Complaint, Ofc. Repress admits that, on January 16, 2015, Donival Gaston contacted Savannah Chatham Metro Police Department and advised the Department that he had located the vehicle on his own by searching the neighborhood. In response to the allegations of the third sentence of paragraph 9 of Plaintiffs' Complaint, Ofc. Repress admits that he went to the location where Mr. Gaston found the vehicle,

and then Ofc. Repress took the Auto Theft Recovery Report. In response to the allegations of the fourth sentence of paragraph 9 of Plaintiffs' Complaint, Ofc. Repress admits that Mr. Gaston waited for forensics to arrive and, after it was determined no fingerprints could be obtained, the vehicle was released to Mr. Gaston, although Ofc. Repress is without sufficient information to admit or deny that Mr. Gaston waited for approximately one (1) hour for forensics to arrive.

10.

Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the allegations of paragraph 10 of Plaintiffs' Complaint.

11.

Ofc. Repress is without sufficient information or knowledge upon which to admit or deny the allegations of paragraph 11 of Plaintiffs' Complaint.

12.

Ofc. Repress denies the allegations of paragraph 12 of Plaintiffs' Complaint.

13.

Ofc. Repress is without sufficient information to admit or deny the allegations of the first sentence of paragraph 13 of Plaintiffs' Complaint. Ofc. Repress denies the remaining allegations of paragraph 13 of Plaintiffs' Complaint.

14.

Ofc. Repress denies the allegations of paragraph 14 of Plaintiffs' Complaint.

15.

Ofc. Repress denies the allegations of paragraph 15 of Plaintiffs' Complaint.

COUNT 1

Negligence

16.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 15 of Plaintiffs' Complaint as if set out verbatim.

17.

Ofc. Repress denies the allegations of paragraph 17 of Plaintiffs' Complaint.

18.

Ofc. Repress denies the allegations of paragraph 18 of Plaintiffs' Complaint.

19.

Ofc. Repress denies the allegations of paragraph 19 of Plaintiffs' Complaint.

20.

Ofc. Repress denies the allegations of paragraph 20 of Plaintiffs' Complaint.

21.

Ofc. Repress denies the allegations of paragraph 21 of Plaintiffs' Complaint.

COUNT 2

RESPONDEAT SUPERIOR

22.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 21 of Plaintiffs' Complaint as if set out verbatim.

23.

Ofc. Repress denies the allegations of paragraph 23 of Plaintiffs' Complaint.

24.

Ofc. Repress denies the allegations of paragraph 24 of Plaintiffs' Complaint.

COUNT 3

VICARIOUS LIABILITY

FAILURE TO PROPERLY TRAIN

25.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 24 of Plaintiffs' Complaint as if set out verbatim.

26.

Ofc. Repress denies the allegations of paragraph 26 of Plaintiffs' Complaint.

27.

Ofc. Repress denies the allegations of paragraph 27 of Plaintiffs' Complaint.

COUNT 4

FAILURE TO HAVE APPROPRIATE POLICIES AND PROCEDURES

28.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 27 of Plaintiffs' Complaint as if set out verbatim.

29.

Ofc. Repress denies the allegations of paragraph 29 of Plaintiffs' Complaint.

30.

Ofc. Repress denies the allegations of paragraph 30 of Plaintiffs' Complaint.

COUNT 5

42 U.S.C. § 1983 – VIOLATION OF CIVIL RIGHTS

31.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 30 of Plaintiffs' Complaint as if set out verbatim.

32.

Ofc. Repress denies the allegations of paragraph 32 of Plaintiffs' Complaint.

33.

Ofc. Repress denies the allegations of paragraph 33 of Plaintiffs' Complaint.

34.

Ofc. Repress denies the allegations of paragraph 34 of Plaintiffs' Complaint.

35.

Ofc. Repress denies the allegations of paragraph 35 of Plaintiffs' Complaint.

COUNT 6

42 U.S.C. § 1983 – VICARIOUS LIABILITY

36.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 35 of Plaintiffs' Complaint as if set out verbatim.

37.

Ofc. Repress denies the allegations of paragraph 37 of Plaintiffs' Complaint.

38.

Ofc. Repress denies the allegations of paragraph 38 of Plaintiffs' Complaint.

COUNT 7

DAMAGES

39.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 38 of Plaintiffs' Complaint as if set out verbatim.

40.

Ofc. Repress denies the allegations of paragraph 40 of Plaintiffs' Complaint.

41.

Ofc. Repress denies the allegations of paragraph 41 of Plaintiffs' Complaint.

42.

Ofc. Repress denies the allegations of paragraph 42 of Plaintiffs' Complaint.

43.

Ofc. Repress denies the allegations of paragraph 43 of Plaintiffs' Complaint.

COUNT 8¹

ATTORNEY FEES

44.

Ofc. Repress reincorporates and re-alleges his responses to the allegations contained in paragraphs 1 through 43 of Plaintiffs' Complaint as if set out verbatim.

45.

Ofc. Repress denies the allegations of paragraph 45 of Plaintiffs' Complaint.

46.

Ofc. Repress denies the allegations of paragraph 46 of Plaintiffs' Complaint.

¹ In their Complaint, Plaintiffs style their claim for attorney's fees as a second Count 7, and therefore the count is really Count 8.

WHEREFORE, Ofc. Repress prays that Plaintiffs' Complaint be dismissed with prejudice, that the prayers for relief in their Complaint be denied, and that all costs of this action be cast against Plaintiffs.

This 17th day of April, 2017.

OLIVER MANER LLP

/s/ **Patrick T. O'Connor**
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Attorney for Ofc. Repress

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of **DEFENDANT DARRYL REPRESS' ANSWER AND DEFENSES** upon all counsel of record by filing the same with the U.S. District Court CM/ECF system which will send an electronic notice to the following:

R. Brandon Galloway
Galloway & Galloway, PC
Post Office Box 674
Pooler, Georgia 31322

Malcolm Mackenzie III
Weiner, Shearouse, Weitz, Greenberg &
Shawe, LLP
P.O. Box 10105
14 East State Street
Savannah, Georgia 31401

This 17th day of April, 2017.

OLIVER MANER LLP

/s/ Patrick T. O'Connor
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